

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEBBIE TAKATA,

Plaintiff,

v.

HARTFORD COMPREHENSIVE
EMPLOYEE BENEFIT SERVICE
COMPANY, a foreign corporation;
BATTELLE MEMORIAL
INSTITUTE, a foreign corporation;
and BATTELLE MEMORIAL
INSTITUTE EMPLOYEES' LONG-
TERM DISABILITY BENEFITS
PLAN,

Defendants.

NO: CV-11-5068-RMP

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

This matter comes before the Court on Defendants' motion for summary judgment, ECF No. 46. The Court has reviewed the filings relating to the motion, including Defendants' accompanying memorandum, ECF No. 48, supporting declarations, ECF No. 50-51, and Statement of Specific Facts, ECF No. 49. Oral argument was held on September 5, 2012. ECF No. 81. Plaintiff argued against

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1 the motion, but did not properly submit responsive briefing or additional support
2 for her position.

3 ***Facts & Procedural History***

4 Plaintiff Debbie Takata worked for Defendant Battelle Memorial Institute
5 (“Battelle”) as a Systems Analyst from January 1983 to June 7, 1991. ECF No. 1,
6 at 3. Her duties in that position included attending meetings, designing operational
7 systems, working with computers and telephones and interacting with other people.
8 ECF No. 51, at 498.

9 By virtue of her employment with Battelle, Plaintiff became a participant
10 under the Battelle Memorial Institute Employees’ Long-Term Disability Benefits
11 Plan (“the Plan”). ECF No. 51, at 560. Battelle was the plan administrator and
12 self-funded the plan. ECF No. 51, at 560, 584; ECF No. 50, at 11.

13 Effective October 1, 2004, Battelle designated Defendant Hartford
14 Comprehensive Employee Benefit Service Company (“Hartford”) as the Plan’s
15 claims administrator subject to an administrative services agreement (“ASA”).
16 ECF No. 51, at 583-98. Pursuant to the ASA, Hartford agreed to interpret all
17 relevant provisions of the Plan relating to eligibility for benefits and handle all
18 appeals related to claim denials or terminations made by Hartford, among other
19 duties. ECF No. 51, at 597. The ASA and the Plan granted Hartford discretionary
20

1 authority to determine eligibility for benefits and to interpret the terms of the Plan.
2 ECF No. 50, at 11; ECF No. 51, at 597.

3 The Plan defines Total Disability as follows:

4 For eligibility for the first 24 months of benefits under the Plan, Total
5 Disability means your inability, due to sickness or accidental bodily
6 injury, to perform important duties pertaining to your occupation
required to meet the business needs of Battelle, as determined by the
Claims Administrator.

7 After 24 months of benefits, Total Disability means your complete
8 inability to engage in any and every gainful occupation for which you
are reasonably fitted by education, training or experience, as
determined by the Claims Administrator.

9 ECF No. 50, at 8.

10 Plaintiff ceased working on June 7, 1991, and filed a claim for disability
11 benefits under the Plan. ECF No. 1, at 3-4. Plaintiff claimed that she was unable
12 to perform her duties due to fibromyalgia and chronic fatigue syndrome, among
13 other conditions. ECF No. 1, at 4. Plaintiff alleged such limitations as
14 overwhelming fatigue, pain, stiffness, mental foggiess, blurred vision, and an
15 ability to complete basic tasks without assistance. ECF No. 51, at 363-67.

16 Plaintiff began receiving disability benefits under the Plan on June 8, 1991.
17 After taking over as claims administrator, Hartford ordered surveillance on
18 Plaintiff's activities in January and February of 2007. The videotaped surveillance
19 took place over four days. ECF No. 51, at 245-53, 355-59.

1 On the basis of the video surveillance, medical records, and other
2 information in Plaintiff's claim file, as discussed further in this Order, Hartford
3 terminated Plaintiff's eligibility under the Plan by letter dated August 20, 2007.
4 ECF No. 51, at 98-102. Plaintiff appealed Hartford's determination on January 28,
5 2008, stating that new medical documentation supported her disability. ECF No.
6 51, at 73-75.

7 Hartford referred the new evidence and the rest of the claim file to Dr. Mark
8 R. Burns, Board Certified in Internal Medicine and Rheumatology, for an
9 independent medical examination ("IME"). ECF No. 51, at 47-50. Dr. Burns
10 found no "quantifiable" proof supporting the claimed extent of Plaintiff's
11 restrictions and limitations, and determined that Plaintiff was capable of returning
12 to full-time work in a sedentary or light-duty capacity. ECF No. 51, at 49.

13 On April 25, 2008, Hartford upheld its decision to terminate Plaintiff's
14 benefits under the Plan. Hartford explained that it had reviewed the entire file,
15 including the new information submitted by Plaintiff and Dr. Burns' IME, and
16 determined that the evidence failed to support functional restrictions and
17 limitations that would prevent Plaintiff from work in any and every occupation
18 despite her medical diagnoses. ECF No. 51, at 38-41.

19 Plaintiff filed suit in this Court on August 22, 2011, alleging that Defendants
20 violated the Employee Retirement Income Security Act (ERISA) by terminating

1 benefits to which she was entitled. Plaintiff further claimed a right to recover
2 penalties and attorney's fees under the Act.

3 Following the initiation of this action, Plaintiff filed a motion to compel
4 discovery from Defendants on January 10, 2012. ECF No. 19. Defendants filed
5 their summary judgment motion on February 22, 2012, while Plaintiff's motion to
6 compel was pending before the Court. ECF No. 46. On March 9, 2012, Plaintiff
7 moved for an extension of time to file a response to Defendants' motion for
8 summary judgment. ECF No. 55. Plaintiff's counsel explained that the discovery
9 Plaintiff sought pursuant to the motion to compel would be relevant to her response
10 to Defendants' summary judgment motion. ECF No. 55-1. The Court granted
11 Plaintiff's motion for an extension of time by Order dated March 14, 2012. The
12 Order provided that Plaintiff would have two weeks from the date the Court
13 resolved the pending motion to compel to file her response to Defendants' motion
14 for summary judgment. ECF No. 60.

15 The Court entered an Order granting in part Plaintiff's motion to compel on
16 March 28, 2012. ECF No. 61. Accordingly, Plaintiff had until April 11, 2012, to
17 file a response to Defendants' motion for summary judgment. To accommodate
18 Defendants' response time, the Court set oral argument on Defendants' motion for
19 September 5, 2012. ECF No. 74.

1 Plaintiff did not file a response to Defendant's motion for summary
2 judgment or request an additional extension of time. Then, on August 31, 2012,
3 more than four months after the deadline for filing a response and only two
4 business days prior to oral argument, Plaintiff filed a motion to continue oral
5 argument on Defendants' motion for summary judgment. ECF No. 76. Plaintiff
6 further requested that the Court accept a late-filed response to Defendants' motion
7 for summary judgment. ECF No. 76. Without waiting for the Court to rule on her
8 motion, Plaintiff filed her Response to Defendant's Statement of Specific Facts and
9 her Contrary Statement of Facts on Labor Day, September 3, 2012, just two days
10 before the continued date for oral argument on Defendants' motion. ECF Nos. 77-
11 78. On September 4, 2012, the Court issued an Order denying Plaintiff's request
12 for continuance of the oral argument and striking Plaintiff's response filings from
13 the record as untimely and not supported by good cause. ECF No. 80.¹

14 *Analysis*

15 Defendants brought their motion under Rule 52 and Rule 56 of the Federal
16 Rules of Civil Procedure. However, Rule 52 applies only when the court has issued
17 factual findings following a trial on the merits. *See* Fed. R. Civ. P. 52(a); *Nolan v.*

18 ¹ The Court notes that Plaintiff's filings did not contain any additional
19 information that was not already in the record. Moreover, Plaintiff previously
20 briefed many of the issues pertaining to Defendants' summary judgment motion
during the litigation of her motion to compel discovery.

1 *Heald College*, 551 F.3d 1148, 1154 (9th Cir. 2009). This action has not yet
2 proceeded to trial nor has the Court issued findings of fact. The Court will
3 therefore evaluate Defendants' motion as a motion for summary judgment under
4 Federal Rule of Civil Procedure 56.

5 **A. Standard of Review**

6 Summary judgment is appropriate when there are no genuine issues of
7 material fact and the moving party is entitled to judgment as a matter of law.
8 Federal Rule of Civil Procedure 56(a). A "material" fact is one that is relevant to
9 an element of a claim or defense, and whose existence might affect the outcome of
10 the suit. *T.W. Elec. Serv. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630
11 (9th Cir 1987). Thus, the materiality of a fact is determined by the substantive law
12 governing the claim or defense. *Id.* The party asserting the existence of a material
13 fact must show "sufficient evidence supporting the claimed factual dispute . . . to
14 require a jury or judge to resolve the parties' differing versions of the truth at trial."
15 *Id.* (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)).
16 The mere existence of a scintilla of evidence is insufficient. *Anderson v. Liberty*
17 *Lobby, Inc.*, 477 U.S. 242, 252 (1986).

18 The moving party bears the initial burden of demonstrating the absence of a
19 genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323
20 (1986). If the moving party meets this burden, the burden then shifts to the non-

1 moving party to “set out specific facts showing a genuine issue for trial.” *Id.* at
2 324 (internal quotations omitted). The nonmoving party “may not rely on denials
3 in the pleadings, but must produce specific evidence, through affidavits or
4 admissible discovery material, to show that the dispute exists.” *Bhan v. NME*
5 *Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991). In deciding a motion for
6 summary judgment, the court must construe the evidence and all reasonable
7 inferences in the light most favorable to the nonmoving party. *T.W. Elec. Serv.*,
8 809 F.2d at 631-32.

9 However, when the decision to grant or deny ERISA benefits is reviewed for
10 an abuse of discretion, “a motion for summary judgment is merely the conduit to
11 bring the legal question before the district court and the usual tests of summary
12 judgment . . . do not apply.” *Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942 (9th
13 Cir. 1999), *overruled on other grounds by Abatie v. Alta Health & Life Ins. Co.*,
14 458 F.3d 955, 965 (9th Cir. 2006) (en banc). A denial of benefits under an ERISA
15 plan is reviewed under a de novo standard “unless the benefit plan grants the
16 administrator or fiduciary discretionary authority to determine eligibility for
17 benefits or to construe the terms of the plan.” *Burke v. Pitney Bowes Inc. Long-*
18 *Term Disability Plan*, 544 F.3d 1016, 1023 (9th Cir. 2008) (quoting *Firestone Tire*
19 *& Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). If the plan grants such
20 discretion to the administrator, then the administrator’s determination is reviewed

1 for an abuse of discretion. *Saffon v. Wells Fargo & Co. Long Term Disability*
2 *Plan*, 522 F.3d 863, 866 (9th Cir. 2008).

3 Under the general abuse of discretion standard, a plan administrator's
4 decision on benefits can be upheld if it is "grounded on *any* reasonable basis."
5 *Montour v. Hartford Life & Accident Ins. Co.*, 588 F.3d 623, 629-630 (9th Cir.
6 2009).

7 The court applies a modified abuse of discretion standard when the plan
8 administrator operates under a conflict of interest, such as when the same entity
9 that funds an ERISA benefits plan also evaluates claims. *Id.* at 630. If such a
10 conflict of interest exists, then the court must consider numerous case-specific
11 factors in applying the abuse of discretion standard. *Id.* (citing *Metropolitan Life*
12 *Ins. Co. v. Glenn*, 554 U.S. 105, 118 (2008)). The court must consider the conflict
13 of interest itself along with such factors as the quality and quantity of the medical
14 evidence, whether the plan administrator subjected the claimant to an in-person
15 medical evaluation, whether the administrator provided its independent experts
16 with all of the relevant evidence, and whether the administrator considered a
17 contrary disability determination by the Social Security Administration. *Id.*

18 Defendants argue that the general abuse of discretion standard should apply
19 on summary judgment. Defendants contend that Battelle's long-term disability
20 plan gave it discretion and that this discretion was delegated in turn to Hartford as

1 an independent claims fiduciary. Defendants contend that Hartford exercised this
2 discretion in making the final determination on Ms. Takata's eligibility for
3 benefits. Plaintiff disagrees and instead contends that the Court should review her
4 claim de novo. Plaintiff argues that Battelle is the entity that actually made the
5 determination on her claim and that Hartford simply made a recommendation that
6 Battelle accepted without independent evaluation. Plaintiff further argues that
7 because Battelle did not exercise its discretion in making the determination, de
8 novo review is required.

9 Defendants submitted documentary evidence and multiple declarations in
10 support of their version of the events. Defendants' evidence shows that Battelle's
11 long-term disability plan granted the administrator discretion to determine
12 eligibility for benefits and to construe the terms of the plan. ECF No. 33-2, at 8.
13 Battelle engaged Hartford as a third party claims administrator from October 2004
14 to November 2008, including the time period in question in this suit. ECF No. 35,
15 at 2; ECF No. 36, at 2. The terms of Hartford's role as claims administrator were
16 set forth in an administrative services agreement entitled "Long Term Disability
17 Benefit Administration Agreement" ("ASA"), which was most recently executed
18 on September 26, 2005. ECF No. 36, at 2; ECF No. 36-1. Under the ASA,
19 Battelle delegated to Hartford full and final discretionary authority to make claims
20 determinations and handle claim appeals, among other duties. ECF No. 34, at 2;

1 ECF No. 36-1. The evidence finally demonstrates that Hartford actually made the
2 final claim determination in Ms. Takata's case and did not seek input from
3 Battelle. ECF No. 34, at 3-4; ECF No. 36, at 3-4; ECF No. 51-1, at 38-41, 71.

4 Despite Defendants' evidence, Plaintiff points to an unsigned, undated
5 administrative services agreement included in Plaintiff's claim file as evidence that
6 Battelle actually made the final determination. ECF No. 23-3. The unsigned
7 agreement provides for an arrangement where Hartford would make
8 recommendations to Battelle on appeal, but would not serve as fiduciary and would
9 not make final claim determinations on appeal. ECF No. 23-3, at 5.

10 Marsha L. Macko, the Hartford Appeals Specialist who handled Ms.
11 Takata's appeal, explained in a declaration that Hartford mistakenly included the
12 unsigned administrative services agreement in Ms. Takata's claim file. ECF No.
13 34, at 3. Ms. Macko further explained that the unsigned document was an
14 inoperative draft version of the administrative services agreement, and that Battelle
15 ultimately engaged Hartford to provide more comprehensive services as reflected
16 in the fully executed ASA. ECF No. 34, at 3. Ms. Macko finally explained that
17 Hartford relied on the correct, fully executed ASA in administering Ms. Takata's
18 claim and that Hartford, not Battelle, rendered the final claim determination in the
19 matter. ECF No. 34, at 3-4. Malesa Litteral, Vice President of Benefits and Senior
20

1 ERISA Counsel for Battelle, similarly explained the circumstances in a declaration
2 filed with the Court. ECF No. 36, at 3-4.

3 Plaintiff also relies on correspondence from Hartford employees stating that
4 Battelle would make the final decision on Ms. Takata's benefits claim. An e-mail
5 from Patricia Johnson, Senior National Account Manager for Hartford's Group
6 Benefits Division, stated that Ms. Takata's appeal was not handled according to
7 Hartford's agreement with Battelle and that the final benefit determination
8 belonged with Battelle. ECF No. 23-4, at 6. Ms. Johnson's e-mail indicated that
9 she was relying on information provided by Donna Gatling, an Appeals Specialist
10 for Hartford. Plaintiff also relies on a letter from Ms. Gatling to Plaintiff's counsel
11 stating that Battelle would make the final decision. ECF No. 23-4, at 7. Ms.
12 Gatling further sent a letter to Battelle informing Battelle that, at the time it
13 handled Ms. Takata's appeal, Hartford "had no knowledge of the Agreement or
14 that we should only make an appeals recommendation." ECF No. 23-4, at 8.
15 Finally, an e-mail from Leah Oberley, Benefits Analyst for Battelle, to Ms.
16 Johnson at Hartford indicated that a Battelle employee agreed with the decision
17 Hartford made on Ms. Takata's claim. ECF No. 23-4, at 9.

18 In response, Hartford produced a declaration from Ms. Literal explaining
19 that Ms. Johnson mistakenly relied on the unexecuted draft agreement when stating
20 that Battelle should have made the final determination. ECF No. 36, at 4. Ms.

1 Literal explained that Ms. Johnson drew this conclusion well after Hartford had
2 rendered its final determination pursuant to the fully executed ASA. ECF No. 36,
3 at 4. Thus the misunderstanding had no bearing on the fact that Hartford did render
4 the final claim determination. ECF No. 36, at 4.

5 Plaintiff did not produce any evidence in rebuttal. In fact, in the course of
6 arguing their motion to compel Plaintiff essentially conceded Defendants'
7 demonstration that Hartford made the final determination on Ms. Takata's claim.
8 ECF No. 40, at 7-8. Plaintiff's remaining argument is that they were not properly
9 informed of the fully executed ASA or the true facts behind Hartford's appeals
10 process prior to bringing their litigation. ECF No. 40, at 7-8. While this argument
11 may be relevant to the question of whether Defendants can be held liable for
12 failing to provide the information when Plaintiff requested her claim file and
13 supporting documentation, it does not create an issue of material fact as to whether
14 Hartford was delegated discretion and authority to determine claims on appeals and
15 actually made the final determination in this case.

16 Finally, the Court notes that Plaintiff was given an opportunity to conduct
17 discovery on the matter of whether Battelle or Hartford actually rendered the final
18 claims decision. ECF No. 61. Despite this opportunity, Plaintiff was unable to
19 produce any further evidence showing that Battelle actually made the final
20 determination.

1 The Court finds that the unsigned, inoperative draft administrative
2 circumstances agreement does not create an issue of fact of fact as to whether
3 Hartford or Battelle actually made the final determination on Ms. Takata's appeal.
4 No reasonable finder of fact could credit such a document in the face of the fully
5 executed administrative services agreement showing that Battelle delegated to
6 Hartford full and final discretionary authority to make claim determinations and to
7 handle claims on appeal, the declarations setting forth Hartford's role in actually
8 making the final determination in Ms. Takata's case, and the declarations
9 explaining that the unsigned, inoperable administrative services agreement was
10 accidentally placed in Ms. Takata's claim file. Therefore the Court will apply an
11 abuse of discretion standard in reviewing Hartford's decision on Ms. Takata's
12 claim for benefits.²

13 **B. Plaintiff's Claim**

14 Defendants contend that Hartford did not abuse its discretion in denying
15 Plaintiff's claim. Plaintiff disagrees on the merits, and further argues that

16 ² Plaintiff additionally alleged in her complaint that Battelle operated under a
17 structural conflict because it both funded the Plan and administered the claims.
18 ECF No. 1, at 19-20. However, Plaintiff appears to have abandoned this argument
19 at the summary judgment stage. The argument would fail in any event, because
20 Defendants have shown that Hartford was the claims administrator and rendered
the final determination in Plaintiff's case.

1 Defendants violated ERISA regulations by failing to fully inform her of the
2 information necessary to perfect her claim on appeal and that Hartford acted
3 improperly by requiring her to submit objective evidence supporting her claimed
4 limitations and restrictions. These issues are addressed in turn.

5 *1. The Merits*

6 In the absence of a conflict of interest, the abuse of discretion standard
7 operates such that the plan administrator's decision can be upheld if it is "grounded
8 on any reasonable basis." *Montour*, 588 F.3d at 629-30 (quoting *Sznewajs v. U.S.*
9 *Bancorp Amended & Restated Supplemental Benefits Plan*, 572 F.3d 727, 732 (9th
10 Cir. 2009)). An administrator's finding of fact is clearly erroneous when,
11 "although there is evidence to support it, the reviewing [body] on the entire
12 evidence is left with the definite and firm conviction that a mistake has been
13 committed." *Boyd v. Bert Bell/Pete Rozelle NFL Players Ret. Plan*, 410 F.3d
14 1173, 1178 (9th Cir. 2005) (quoting *Concrete Pipe & Prods., Inc. v. Constr.*
15 *Laborers Pension Trust*, 508 U.S. 602, 622 (1993)). In applying this test, the court
16 must consider "whether application of a correct legal standard was (1) illogical, (2)
17 implausible, or (3) without support in inferences that may be drawn from the facts
18 in the record." *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666, 676
19 (9th Cir. 2011) (internal quotation omitted).

1 Defendants assert numerous bases for Hartford's decision to deny Ms.
2 Takata's claim for long-term disability benefits. First, Defendants point to the
3 results of the surveillance Hartford conducted in January and February of 2007.
4 Reports of the surveillance showed Ms. Takata engaged in various activities that
5 contradicted her claimed restrictions and limitations. For example, Ms. Takata was
6 shown instructing back-to-back Tae Kwon Do classes on consecutive days, during
7 which she executed repeated high kicks, held boards while students attempted to
8 break them with high kicks, and assisted students with stretching and strengthening
9 exercises. ECF No. 51, at 245-53. When Ms. Takata was not teaching Tae Kwon
10 Do, surveillance demonstrated that she performed administrative work in the studio
11 office, attended church, and ran errands. ECF No. 51, at 245-53, 255-59. Ms.
12 Takata was further observed standing, bending, squatting, kneeling, and driving,
13 and lifting, carrying, and pushing multiple items of varying weight, apparently
14 without any obvious difficulty or restriction. ECF No. 51, at 245-53. Defendants
15 point out that Ms. Takata told Hartford that the time of year that this surveillance
16 took place was a time when her condition was at its worst. ECF No. 51, at 363.

17 Second, Defendants point to the surveillance company's interview with Ms.
18 Takata on April 10, 2007. Ms. Takata asserted that she was only functional for a
19 few hours per day, that she did not instruct Tae Kwon Do, and that she could not
20 perform any type of work due to her exhaustion, lack of focus, and mental

1 fogginess. EFC No. 51, at 237-38. Although Ms. Takata denied instructing Tae
2 Kwon Do, she did say that on rare occasion she might show her classes a “low”
3 kick position. ECF No. 51, at 238. Defendants contend that Ms. Takata’s answers
4 in the interview contravene Hartford’s surveillance of her activities.³

5 Third, Defendants point to an independent medical examination conducted
6 by Dr. Wing Chau on January 2, 2004. Dr. Chau stated that Ms. Takata’s
7 examination was “fairly unremarkable objectively”; that there wasn’t much in her
8 records “that would indicate that she is disabled from a rehabilitation standpoint”;
9 that video surveillance of Ms. Takata had her “doing quite well with no signs of
10 illness”; that Ms. Takata was noted as being at the office as early as 2:30 p.m. and
11 did not leave the office until about 8:30 p.m. on teaching days; and that although
12 Ms. Takata reported sleeping most of the day three or four days out of the week,
13 she was “certainly well toned and without deconditioning signs”. ECF No. 51, at
14

15 ³ The Court is aware that Plaintiff takes issue with the significance Hartford
16 attaches to Ms. Takata’s activities during the surveillance. For example, Plaintiff
17 contends that there were many hours during surveillance when she was not active,
18 and that her activities instructing the Tae Kwon Do classes were consistent with
19 her doctors’ recommendations that she engage in regular exercise, ECF No. 51, at
20 89. However, given that the activity reported in the surveillance logs is at such
odds with Plaintiff’s claimed restrictions and limitations, the Court finds that these
claimed distinctions are not significant.

1 378. Dr. Chau further opined that Ms. Takata was capable of returning to at least
2 light duty work at a desk for at least four hours per day. ECF No. 51, at 378.

3 Fourth, Defendants point to lab studies conducted by Dr. Kemunto Kakumba
4 in May 2007. The studies indicated normal metabolic, lipid and thyroid panels.
5 ECF No. 51, at 159-66. Dr. Kakumba additionally stated that Ms. Takata's
6 cognition was good. ECF No. 51, at 47.

7 Fifth, Defendants point to a functional assessment conducted by Marylou
8 Watson, a registered nurse, in July 2007. Based on Hartford's video surveillance
9 of Ms. Takata's activities and the contravening answers Ms. Takata gave in her
10 interview with the surveillance company, Nurse Watson concluded that Ms. Takata
11 was capable of full-time work in a sedentary or light duty capacity. ECF No. 51, at
12 151-52. Nurse Watson opined that Ms. Takata could engage in frequent walking
13 and standing, that she could employ full use of her upper extremities, and that she
14 could lift or carry up to twenty pounds occasionally and ten pounds frequently.
15 ECF No. 51, at 152.

16 Sixth, Defendants point to the opinion Ms. Takata's treating physician, Dr.
17 Kakumba, submitted before the initial claims denial and Ms. Takata's subsequent
18 appeal. Nurse Watson had provided the findings of her functional assessment to
19 Dr. Kakumba and explained that Hartford was evaluating Ms. Takata's physical
20 abilities. ECF No. 51, at 146. Dr. Kakumba was asked to indicate whether she

1 agreed or disagreed with Nurse Watson's findings. Dr. Kakumba indicated her
2 agreement with Nurse Watson's findings. ECF No. 51, at 146. Dr. Kakumba
3 further noted that she "would recommend capability of employment that allowed,
4 at least initially, for frequent breaks," but otherwise agreed with Nurse Watson's
5 findings. ECF No. 51, at 146.

6 Seventh, Defendants point to Ms. Takata's treatment by Dr. Dale Heaston,
7 an optometrist. Ms. Takata had claimed trouble with her vision. ECF No. 51, at
8 483. Dr. Heaston determined that Ms. Takata suffered from no significant
9 problems with her vision and was not restricted in any way by virtue of her vision.
10 ECF No. 51, at 100-01, 144, 230-32.

11 Eighth, Defendants point to a functional assessment conducted by Lisa
12 Hufford, a vocational rehabilitation specialist. Ms. Hufford followed Nurse
13 Watson's conclusion that Ms. Takata could perform full-time work in a sedentary
14 or light duty capacity. ECF No. 51, at 104. Based on the restrictions and
15 limitations prescribed by Nurse Watson and Ms. Takata's qualifications and work
16 history, Ms. Hufford identified eight alternative occupations that Ms. Takata could
17 be gainfully employed in within her geographic area. ECF No. 51, at 104-142.

18 Finally, Defendants point to a peer review report conducted by Dr. Mark R.
19 Burns, Board Certified in Internal Medicine, dated March 11, 2008. ECF No. 51,
20 at 47-50. Dr. Burns conducted his review after Ms. Takata appealed her claim

1 denial. Dr. Burns reviewed Ms. Takata's medical records and concluded that Ms.
2 Takata was capable of full-time employment in a light-level capacity. ECF No. 51,
3 at 49. Dr. Burns noted a lack of "quantifiable" evidence supporting Ms. Takata's
4 claimed limitations and restrictions. Dr. Burns further noted that Ms. Takata's
5 objective test results were normal, that there was no indication that she suffered
6 from joint, nerve, or muscle damage, and that the video surveillance conducted on
7 Ms. Takata showed a high degree of physical functioning. ECF No. 51, at 49.

8 For her part, Plaintiff claims that Hartford abused its discretion in denying
9 her claim. Plaintiff principally relies upon functional assessments Dr. Kakumba
10 submitted after the initial claims denial dated August 20, 2007, as well as the
11 Social Security Administration's award of disability benefits. Ms. Takata began
12 receiving Social Security benefits around the time she claimed a disability under
13 the Plan in June of 1991. ECF No. 51, at 366. Ms. Takata was notified in January
14 of 2003 that the Social Security Administration had reviewed the evidence of her
15 disability claim and found that her disability was continuing. ECF No. 51, at 446-
16 48.

17 After Hartford notified Plaintiff of the termination of her benefits Plaintiff
18 filed an appeal and submitted an opinion from her treating physician, Dr.
19 Kakumba. Dr. Kakumba previously had stated that she agreed with Hartford's
20 initial assessment that Ms. Takata was capable of performing full-time, sedentary

1 to light-duty work. ECF No. 51, at 146. However, in the course of Ms. Takata's
2 appeal and as a result of Ms. Takata's responses on chronic fatigue syndrome and
3 fibromyalgia residual functioning questionnaires, Dr. Kakumba identified Ms.
4 Takata's functional limitations as an inability to sit for longer than ten to sixty
5 minutes, an inability to stand for longer than one hour, and an inability to sit, stand,
6 and walk more than two hours in an eight hour day. Dr. Kakumba further noted
7 Ms. Takata's limited ability to stoop and crouch and significant restrictions on
8 repetitive lifting. ECF No. 51, at 76-86

9 Dr. Kakumba opined that Ms. Takata would need to take unscheduled breaks
10 every one to two hours during an eight-hour workday, and that these breaks could
11 range from several minutes to four hours in length. ECF No. 51, at 79. Dr.
12 Kakumba further opined that Ms. Takata could not sustain continuous work for
13 more than two consecutive days. ECF No. 51, at 80. Dr. Kakumba explained the
14 discrepancies in her opinions by stating that she better understood Ms. Takata's
15 limitations after she got to know her more. ECF No. 51, at 47.

16 In its decision denying Ms. Takata's claims appeal, Hartford explained that
17 it considered Ms. Takata's self-reported symptoms as well as any objective
18 evidence confirming those symptoms. ECF No. 51, at 33. Hartford further
19 explained that Dr. Kakumba's findings were based entirely on Ms. Takata's
20 subjective report of her symptoms and were not verified by objective evidence.

1 ECF No. 51, at 33-34. Hartford based this determination on the opinion of Dr.
2 Burns, who reviewed Dr. Kakumba's findings and determined that they were
3 unsupported by objective evidence. ECF No. 51, at 33-34. In Dr. Burns' view, the
4 available objective evidence instead indicated that Ms. Takata was capable of
5 working full-time in a light-level capacity. ECF No. 51, at 49.

6 Plaintiff additionally points to the Social Security Administration's
7 determination that she was disabled and that her disability was continuing. ECF
8 No. 51, at 446-48. Plaintiff contends that Hartford should have given this fact
9 greater weight.

10 In *Salomaa v. Honda Long Term Disability Plan*, 642 F.3d 666 (9th Cir.
11 2011), the Ninth Circuit recognized that Social Security disability awards "do not
12 bind plan administrators, but . . . are evidence of disability." *Id.* at 679. The court
13 reversed a denial of benefits in *Salomaa* in part because the administrator did not
14 even mention the claimant's Social Security award in its denial letters. *See id.* The
15 court explained that "[w]eighy evidence may ultimately be unpersuasive, but it
16 cannot be ignored." *Id.*; *see also Montour*, 588 F.3d at 635 ("While ERISA plan
17 administrators are not bound by the SSA's determination, complete disregard for a
18 contrary conclusion without so much as an explanation raises questions about
19 whether an adverse benefits determination was 'the product of a principled and
20 deliberative process.'" (internal quotations and citations omitted)).

1 In this case, Hartford acknowledged the Social Security Administration's
2 determination in its claims denial letter and stated that it took the SSA's
3 determination into account when reviewing Ms. Takata's claim. ECF No. 51, at
4 34. Hartford explained that the SSA has different guidelines for determining
5 disability and that Hartford was not bound by its determination. ECF No. 51, at
6 34.⁴

7 Plaintiff additionally states that Hartford did not give proper weight to the
8 cyclical nature of her disease. Ms. Takata reported that her illness was cyclical
9 with ups and downs in the manifestation of her symptoms. ECF No. 51, at 236.
10 Dr. Chau noted in his 2004 IME report that fibromyalgia/chronic fatigue syndrome
11 waxes and wanes and opined that Ms. Takata probably would need medical care
12 during episodic exacerbation of her symptoms. ECF No. 51, at 378. For its part,
13 Hartford notes that Ms. Takata had reported her symptoms as being at their worst
14 during the time of year when they conducted the video surveillance. ECF No. 51,
15 at 363.⁵Based on the entire record, and taking into account Ms. Takata's

16 ⁴ In addition, the Court notes that this case is not governed by the heightened
17 abuse of discretion standard applied in *Salomaa* and *Montour*. See *Salomaa*, 642
18 F.3d at 676; *Montour*, 588 F.3d at 629-30. Those cases involved a conflict of
19 interest by the claims administrator that is not present here.

20 ⁵ The Court further takes note of the medical report of Dr. Gorman, as submitted
by Plaintiff on appeal of Hartford's initial denial of her claim. ECF No. 51, at 32.

1 objections, the Court concludes that Hartford's denial of Ms. Takata's long-term
2 disability claim was grounded in a reasonable basis. Given the opinions of Dr.
3 Chau, Dr. Burns, and the initial opinion of Ms. Takata's own treating physician,
4 Dr. Kakumba, along with the video surveillance and the functional assessments
5 conducted by Nurse Watson and Ms. Hufford, the Court does not find that
6 Hartford's determination was illogical, implausible, or without support in the
7 record. Hartford did not abuse its discretion in determining that Ms. Takata was no
8 longer eligible under the long-term disability plan.

9 *2. Requirement that Plaintiff Provide Objective Evidence of her Limitations*
10 *and Restrictions*

11 Plaintiff asserts that Hartford wrongfully required her to produce objective
12 evidence supporting her diagnoses of fibromyalgia and chronic fatigue syndrome
13 because such illnesses are not amenable to objective proof. In support of her
14 Plaintiff saw Dr. Gorman for the purposes of diagnosing fibromyalgia. ECF No.
15 51, at 87. Plaintiff does not appear to rely on Dr. Gorman's report as supporting
16 her claim at this phase in the litigation. For their part, Defendants assert that Dr.
17 Gorman's report actually provides another basis for denying Plaintiff's claim
18 because the report contained no discussion of limitations or impairments relating to
19 Ms. Takata's ability to work and did not definitively diagnose Ms. Takata with
20 fibromyalgia. ECF No. 51, at 87-89. Instead, Dr. Gorman recommended that Ms.
Takata undergo a sleep study and blood tests to rule out other causes of her
symptoms. ECF No. 51, at 88. Defendants point out that there is no evidence that
Ms. Takata actually followed up on any of Dr. Gorman's recommendations.

1 argument, Plaintiff points to *Salomaa v. Honda Long Term Disability Plan*, 642
2 F.3d 666 (9th Cir. 2011). In that case, the Ninth Circuit found that an
3 administrator's decision denying a claim for long-term disability benefits was not
4 reasonable, in part because the administrator demanded objective evidence
5 supporting the claimant's diagnosis of chronic fatigue syndrome. *Id.* at 676-80.

6 In response, Defendants contends that even though Ms. Takata's diagnoses
7 of fibromyalgia and chronic fatigue syndrome cannot be verified by objective
8 evidence, the physical limitations that those conditions create are amenable to
9 objective analysis. Defendants cite *Boardman v. Prudential Ins. Co.*, 337 F.3d 9
10 (1st Cir. 2003), and *Pralutsky v. Metropolitan Life Ins. Co.*, 435 F.3d 833 (8th Cir.
11 2006), in support of their argument.

12 In *Boardman*, the court upheld a claims administrator's determination that
13 while the claimant may have suffered from fibromyalgia and chronic fatigue
14 syndrome, she had not shown any objective evidence of limitations or restrictions
15 on her ability to work. 337 F.3d at 16-17. The court noted that the claims
16 administrator did not require the claimant to present objective medical evidence
17 establishing her illnesses, but rather that it found there was no objective evidence
18 that her illnesses rendered her unable to work. *Id.* at 16 n.5. Similarly, in
19 *Pralutsky* the court upheld the denial of a claim for benefits when the claims
20 administrator requested objective evidence substantiating the extent of the

1 claimant's disability, rather than objective evidence proving that the claimant
2 suffered from fibromyalgia at all. *See* 435 F.3d at 839-41.

3 In this case Hartford did not deny Ms. Takata's claimed diagnoses based on
4 the lack of objective evidence. In fact, Hartford specifically stated in its denial
5 letter that it recognized the presence of Ms. Takata's medical conditions. ECF No.
6 51, at 33. However, Hartford explained that the mere presence of a condition does
7 not determine disability in and of itself. ECF No. 51, at 33. Hartford found that
8 Ms. Takata had not shown objective evidence that her diagnosed conditions limited
9 her ability to work in any occupation for which she was qualified. ECF No. 51, at
10 33-34; 48-49. Thus, Hartford did not base its decision on the lack of objective
11 evidence supporting the claimed diagnoses of fibromyalgia and chronic fatigue
12 syndrome, as prohibited by *Salomaa*, but rather on the lack of objective evidence
13 supporting the claimed extent of impairment, as approved of in *Boardman*, 337
14 F.3d 9, and *Pralutsky*, 435 F.3d 833.⁶

16 ⁶ In addition, the Court notes that the administrator was operating under a
17 structural conflict of interest in *Salomaa*, and therefore the court applied the abuse
18 of discretion standard with a greater degree of skepticism. 642 F.3d at 674-75.
19 Because Hartford did not operate under a conflict in this case, Hartford's decision
20 is subject to a less stringent form of abuse of discretion review. *See Montour*, 588
F.3d at 629-30.

1 Hartford did not abuse its discretion by relying on a lack of objective
2 evidence supporting Plaintiff's claim. To find otherwise would imply that a claims
3 administrator must always accept as completely accurate a diagnosis of
4 fibromyalgia and/or chronic fatigue syndrome *and* the claimant's subjective report
5 of the limitations and restrictions placed on his or her ability to work as a result of
6 those conditions. The Court rejects such a rationale.

7 *3. Notice of Information Necessary to Perfect Claim on Appeal*

8 ERISA provides that an administrator denying a claim for benefits must set
9 forth the specific reasons for the denial in a manner calculated to be understood by
10 the participant, and must provide a reasonable opportunity for "full and fair
11 review" of the claim denial. 29 U.S.C. § 1133. The regulations promulgated
12 under 29 U.S.C. § 1133 state that a denial notification must (1) set forth the
13 specific reasons for the adverse determination; 2) reference the specific plan
14 provisions on which the determination is based; 3) describe any additional
15 materials necessary to perfect the claim and an explanation of why such materials
16 are necessary; and 4) provide the plan's review procedures and the time limits
17 applicable to such procedures. 29 C.F.R. § 2560.503-1(g). The Ninth Circuit has
18 interpreted these regulations as calling for a "meaningful dialogue" between
19 ERISA administrators and their beneficiaries under the plan. *Saffon*, 522 F.3d at
20

1 870 (discussing *Booton v. Lockheed Med. Benefit Plan*, 110 F.3d 1461, 1463 (9th
2 Cir. 1997)).

3 Plaintiff claims that Defendants violated 29 C.F.R. § 2560.503(1)(g)(iii) by
4 not informing Ms. Takata of the information necessary to perfect her claim.
5 Plaintiff asserts that Hartford ultimately denied Ms. Takata's claim on appeal
6 because she did not submit objective evidence in support of her claim, without first
7 informing her that objective evidence was necessary to perfect the initial denial.

8 Hartford initially denied Plaintiff's claim by letter dated August 20, 2007.
9 ECF No. 51, at 98-102. Pertinent to this discussion, Hartford's initial denial noted
10 Ms. Takata's subjective report of her symptoms and limitations, but stressed that
11 the observable evidence, including the available medical reports and the video
12 surveillance, belied her claim that she could not engage in any occupation for
13 which she was qualified. ECF No. 51, at 99-102. The letter also referenced the
14 opinion of her treating physician, Dr. Kakumba, who at that time agreed with
15 Hartford's assessment that Ms. Takata was capable of full-time work in a sedentary
16 to light-type capacity. ECF No. 51, at 100-01. The letter stated that Dr. Kakumba
17 was advised that if she did not agree with Hartford's assessment of Ms. Takata's
18 limitations, then "she should provide restrictions and/or limitations with medical
19 rationale as to why such restrictions and/or limitations were supported." ECF No.
20 51, at 101. The letter finally advised that if Ms. Takata chose to appeal the initial

1 denial, she could submit any additional documents, records or other information in
2 support of her claim. ECF No. 51, at 102.

3 Ms. Takata did appeal the denial and submitted, among other documents,
4 chronic fatigue syndrome and fibromyalgia residual functioning questionnaires
5 completed by Dr. Kakumba. ECF No. 51, a 76-86. The questionnaires indicated
6 numerous functional limitations on the part of Ms. Takata, and Dr. Kakumba
7 ultimately concluded from those limitations that Ms. Takata could not sustain
8 continuous work for more than two consecutive days. ECF No. 51, at 80.

9 After receipt of the new information submitted by Dr. Kakumba, Hartford
10 referred the information and Ms. Takata's claim file to Dr. Burns for an
11 independent medical examination. ECF No. 51, at 33. Dr. Burns noted Ms.
12 Takata's diagnoses of fibromyalgia and chronic fatigue syndrome, as well as her
13 subjective reports of her symptoms and limitations. ECF No. 51, at 48. However,
14 Dr. Burns stated that Ms. Takata's subjective reports of fatigue could not be
15 "quantified" and that the objective evidence of her capabilities, including the video
16 surveillance, indicated a high degree of physical functioning inconsistent with Ms.
17 Takata's subjective report of her limitations. ECF No. 51, at 49.

18 Harford denied Ms. Takata's appeal by letter dated April 25, 2008. In the
19 appeal denial letter, Hartford relied on Dr. Burns' report as well as the rest of the
20 claim file in determining that the objective evidence showing that Ms. Takata was

1 capable of working full-time in a sedentary or light-duty position far outweighed
2 the subjective reports of her symptoms and limitations. ECF No. 51, at 32-34.
3 Hartford acknowledged Dr. Kakumba's opinion that Ms. Takata would be unable
4 to work more than two consecutive days in a row, but determined that Dr.
5 Kakumba's opinion was not supported by objective medical evidence. ECF No.
6 51, at 34. Plaintiff contends that this was improper, because Hartford had notified
7 her that any additional evidence she submitted on appeal must be based on
8 objective evidence.

9 The Court finds Plaintiff's argument unpersuasive. The initial denial letter
10 generally stated that Ms. Takata's subjective reports of her limitations were not
11 enough to overcome the objective evidence indicating that she did not qualify as
12 disabled under the plan. In addition, the letter specifically stated that if Dr.
13 Kakumba had disagreed with Hartford's assessment, then Dr. Kakumba needed to
14 provide "medical rationale" supporting restrictions and/or limitations that
15 prohibited Ms. Takata from working full-time. Thus Ms. Takata was on notice that
16 subjective reports of her limitations and restrictions were not sufficient to
17 overcome the objective evidence, and that if any additional information was
18 submitted it likely would need to provide some objective rationale for her claimed
19 limitations and restrictions. The Court further notes that Hartford could not
20 specifically address Dr. Kakumba's opinion in its initial denial letter. Dr.

1 Kakumba's opinion at the time of the initial denial of Ms. Takata's claim was that
2 Ms. Takata *could* work in a full-time capacity. This is not a case where the claims
3 administrator failed to explain how some piece of evidence the claimant filed
4 before her appeal was deficient. Hartford could not be expected to anticipate that
5 Dr. Kakumba would change the substance of her opinion on appeal.

6 The Court further notes that Hartford's denial letter complied with all other
7 requirements in 29 U.S.C. § 1133 and 29 C.F.R. § 2560.503-1(g). On the whole,
8 the Court finds that Hartford provided Ms. Takata with a "full and fair review" of
9 her claim on administrative appeal.

10 The final issue with Plaintiff's argument is that she even if she could
11 establish a violation of 29 C.F.R. § 2560.503-1(g), she may not have an available
12 remedy. Plaintiff has not represented that she possesses objective evidence of her
13 restrictions and limitations that she could have submitted had she known that
14 Hartford would require it. If Ms. Takata had argued that such evidence existed,
15 and she stated a violation of the ERISA regulations, then the Court may have
16 allowed her to present that evidence at this phase in the litigation. *See Saffon*, 522
17 F.3d at 872-73. To the extent that Plaintiff requests the Court to weigh any alleged
18 violation of 29 C.F.R. § 2560.503-1(g) in reviewing Hartford's denial of her claim,
19 the Court continues to find that Hartford did not abuse its discretion.

1 **C. ERISA Penalties**

2 Plaintiff asserts that she is entitled to ERISA penalties under 29 U.S.C. §
3 1132(c) and 29 C.F.R. § 2575.503-1(h)(2)(iii) for Defendants' alleged failure to
4 produce a complete copy of Plaintiff's claim file upon her request.

5 On September 27, 2008, Plaintiff's counsel sent a letter to Hartford
6 requesting production of a complete copy of Ms. Takata's claim file and
7 supporting documentation. ECF No. 51, at 26- 28. Hartford provided the claim
8 file on October 7, 2008. ECF No. 2, at 1. Plaintiff alleged in her complaint that
9 Hartford's response was deficient in several ways, including by not providing
10 materials developed by a previous claims administrator. ECF No. 1, at 21-22. In
11 the course of this litigation, Plaintiff additionally asserted that Defendants are
12 liable for not producing the actual, operative administrative services agreement
13 between Battelle and Hartford and other documents Defendants relied upon in
14 contending that Hartford, and not Battelle, was the entity who made the final
15 determination on Ms. Takata's claim. ECF No. 40, at 7-8.

16 ERISA provides claimants with a cause of action for penalties against an
17 administrator who does not comply with a request for information. 29 U.S.C. §
18 1132(c)(1). The Ninth Circuit has explained that this section only allows for a
19 remedy against a plan administrator and not a third-party claims administrator.
20 *Sgro v. Danone Waters of N. Am.*, 532 F.3d 940, 945 (9th Cir. 2008) (citing *Moran*

1 *v. Aetna Life Ins. Co.*, 872 F.2d 296, 299-300 (9th Cir. 1989)). As the Defendants
2 point out, Plaintiff directed her request for information to Harford, the claims
3 administrator, and not Battelle, the plan administrator. ECF No. 51, at 26- 28.
4 Therefore Plaintiff's claim for ERISA penalties must fail.

5 ***Conclusion***

6 Hartford did not abuse its discretion by terminating Ms. Takata's claim for
7 benefits under Battelle's long-term disability plan. Nor is Plaintiff entitled to
8 ERISA penalties for any alleged failure to provide information pursuant to
9 Plaintiff's request. Defendants' motion for summary judgment, **ECF No. 46**, is
10 therefore **GRANTED**.

11 The District Court Executive is hereby directed to enter this Order, enter
12 Judgment for Defendants, provide copies to counsel, and to **close the file**.

13 **DATED** this 16th day of October 2012.

14
15 *s/ Rosanna Malouf Peterson*
16 ROSANNA MALOUF PETERSON
17 Chief United States District Court Judge
18
19
20